REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

Claims 1-11 and 13-49 are pending in this application. Claims 1, 3, 6 and 7 are amended and claims 22-49 are added without prejudice. No new matter is added. New claims 22-49 are added to address U.S. Patent No. 6,489,267 to Reugg.

The amendments and the remarks made herein are not made for reasons related to patentability and, thus, do not prevent the application of the doctrine of equivalents. Support for the amended recitations in the claims and for the new claims are found throughout the specification and from the pending claims.

Claims 6-11 were objected to under 37 C.F.R. §1.75(c) as allegedly being in improper form. The amendments to claims 6 and 7 render the objection moot. Consequently, reconsideration and withdrawal of the objection are respectfully requested.

Claims 1 and 3 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The amendments to claims 1 and 3 render the rejection moot. Consequently, reconsideration and withdrawal of the Section 112 rejection are respectfully requested.

Claims 1-3 and 13-21 were purportedly rejected under 35 U.S.C. §135(a) as being based upon claims 1-12 of U.S. Patent No. 6,489,267 to Reugg. Applicants initially point out that Section 135(a) merely empowers the Examiner to declare an interference; it does not, however, constitute a formal basis of rejection. If the Examiner is of a different opinion, clarification is respectfully requested. Further, if the Examiner believes an interference should be declared with the Reugg patent, Applicants will move forward accordingly. Additionally, Applicants present

new claims 22-49 within the 1-year deadline set by the issue date of the Reugg patent. Consequently, no subject matter is hereby disclaimed.

Claims 1-5 and 13-21 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,441,922 to Ort et al. Applicants respectfully disagree as the Ort patent fails to teach or suggest the instantly claimed invention.

Instant claim 1 recites that the following proviso:

b) in the compound of the formula (I), V=V3 where R^6 = OH, and the safener:

- has the formula (II) where W = W1, W2, W3 or W4 where m'= 1 or

- has the formula (III) and T is a (C_1- or C_2)-alkanediyl chain which is unsubstituted or substituted by one or two (C_1-C_4)-alkyl radicals.

Thus, the instant invention does not fall within the scope of the Ort patent.

Further, it is well-settled that "obvious to try" is not the standard upon which an obviousness rejection should be based. *See In re Fine*. And as "obvious to try" would be the only standard that would lend the Section 103 rejection any viability, the rejection must fail as a matter of law. Therefore, applying the law to the instant facts, the rejection is fatally defective and should be removed.

Consequently, reconsideration and withdrawal of the Section 103 rejection are believed to be in order and such actions are respectfully requested.

CONCLUSION

In view of the remarks and amendments herewith, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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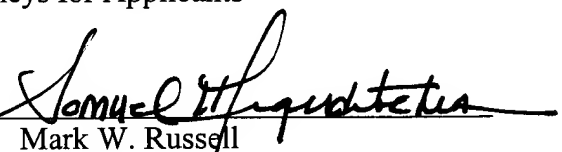
By: 

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